

EXHIBIT D

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PAVLE ZIVKOVIC,

Plaintiff,

22 Civ. 7344 (GHW)

-against-

VALBELLA AT THE PARK, LLC,

Defendant.

- - - - - x

DATE: Thursday, May 25, 2023

TIME: 10:03 a.m.

Deposition of ROSEY KALAYJIAN,
Defendant, taken by Plaintiff, in the
above-entitled action, held via Zoom, Veritext
Virtual, pursuant to notice, taken before
Elizabeth A. Stella, a Stenographer and Notary
Public within and for the State of New York.

<p style="text-align: right;">Page 2</p> <p style="text-align: center;">2</p> <p>1</p> <p>2 REMOTE APPEARANCES:</p> <p>3 JOSEPH & KIRSCHENBAUM, LLP</p> <p>4 Attorneys for Plaintiff</p> <p>5 32 Broadway, Suite 601</p> <p>6 New York, New York 10004</p> <p>7 (212) 688-5640</p> <p>8 BY: LUCAS C. BUZZARD, ESQ.</p> <p>9 lucas@jk-llp.com</p> <p>10</p> <p>11 LAW OFFICES OF FRED L. SEEMAN</p> <p>12 Attorneys for Defendant,</p> <p>13 Valbella at the Park LLC</p> <p>14 32 Broadway, Suite 1214</p> <p>15 New York, New York 10004</p> <p>16 (212) 608-5000</p> <p>17 BY: FRED L. SEEMAN, ESQ.</p> <p>18 fred@seemanlaw.com</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 R. Kalayjian</p> <p>2 ROSEY KALAYJIAN, the witness</p> <p>3 herein, having been sworn, remotely, upon</p> <p>4 being examined testified as follows:</p> <p>5 EXAMINATION BY MR. BUZZARD:</p> <p>6 Q Good morning, Ms. Kalayjian. How</p> <p>7 are you?</p> <p>8 A Good, thanks. How are you?</p> <p>9 Q Good, thanks. So I know, obviously</p> <p>10 I was present for your last deposition, so I</p> <p>11 know you know generally what this is. So I'll</p> <p>12 just very briefly go over some basic ground</p> <p>13 rules for today.</p> <p>14 First, because Ms. Stella is writing</p> <p>15 down everything that we say, it's important to</p> <p>16 let me finish my question before you answer.</p> <p>17 Is that all right?</p> <p>18 A Yes.</p> <p>19 Q And I will do the same for you,</p> <p>20 obviously. Also, you know, just in case we</p> <p>21 have any technical difficulties or anything</p> <p>22 like that, if you can't hear me or if you</p> <p>23 don't hear the question, just let me know and</p> <p>24 I'm happy to repeat. Do you understand that?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 3</p> <p style="text-align: center;">3</p> <p>1 STIPULATIONS</p> <p>2 It is hereby stipulated and agreed by</p> <p>3 counsel and among counsel for the respective</p> <p>4 parties hereto, that the filing, sealing, and</p> <p>5 certification of the witness' deposition shall</p> <p>6 be and the same are hereby waived; it is</p> <p>7 further stipulated and agreed that all</p> <p>8 objections, except as to the form of the</p> <p>9 question, shall be reserved to the time of</p> <p>10 trial; it is further stipulated and agreed</p> <p>11 that the within deposition may be signed</p> <p>12 before any notary public with the same force</p> <p>13 and effect as if signed and sworn to before</p> <p>14 the Court.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 R. Kalayjian</p> <p>2 Q And by the same token, if you don't</p> <p>3 understand one of my questions, just let me</p> <p>4 know and I'll rephrase it or ask it in a</p> <p>5 different way. Is that all right?</p> <p>6 A Yes.</p> <p>7 Q Okay. If you need a break at any</p> <p>8 time, just let me know. I know we're only</p> <p>9 here until -- we have a hard stop at 1:00, so</p> <p>10 I'm just going to try to go as quickly as</p> <p>11 possible, but obviously if anyone needs a</p> <p>12 break, just let me know and we'll just try to</p> <p>13 keep them quick if that's okay. The only</p> <p>14 thing I ask, Ms. Kalayjian, is that if I've</p> <p>15 asked a question that you answer it before we</p> <p>16 take any break. Is that all right?</p> <p>17 A Yes.</p> <p>18 Q Your attorney, Mr. Seeman, may</p> <p>19 object to some of my questions; however,</p> <p>20 unless he specifically instructs you not to</p> <p>21 answer, you still must answer, despite his</p> <p>22 objection. Do you understand that?</p> <p>23 A Yes.</p> <p>24 MR. SEEMAN: Mr. Buzzard, on that issue,</p> <p>25 are you going to make a statement that this is</p>

<p style="text-align: right;">Page 90</p> <p>1 R. Kalayjian</p> <p>2 have any social media accounts?</p> <p>3 A It does.</p> <p>4 Q On and what platforms does it have</p> <p>5 accounts?</p> <p>6 A It has an Instagram account that we</p> <p>7 never use, rarely use I should say. And I</p> <p>8 believe it has a Facebook account that we</p> <p>9 don't use either.</p> <p>10 Q Okay. Is there a specific person</p> <p>11 that's responsible for updating Valbella at</p> <p>12 the Park's social media accounts?</p> <p>13 A I am, which is why nothing is ever</p> <p>14 done to it. I have no time. It's not what we</p> <p>15 do.</p> <p>16 Q Aside from yourself, is anyone else</p> <p>17 responsible for updating Valbella at the</p> <p>18 Park's social media accounts?</p> <p>19 A No.</p> <p>20 Q And you have always been</p> <p>21 responsible for updating those accounts?</p> <p>22 A Yes.</p> <p>23 Q And there has never been anyone</p> <p>24 else that's had that responsibility?</p> <p>25 A No. It's my password, my account.</p>	<p style="text-align: right;">Page 92</p> <p>1 R. Kalayjian</p> <p>2 website?</p> <p>3 A I just e-mail him what I need done</p> <p>4 and he gets it done. That simple.</p> <p>5 Q Aside from Mr. Sipas, has there</p> <p>6 ever been anyone else in charge of managing</p> <p>7 Valbella at the Park's website?</p> <p>8 A No.</p> <p>9 Q Okay. I'm going to direct your</p> <p>10 attention back to Exhibit 2. Again, this is</p> <p>11 the responses to plaintiff's first request for</p> <p>12 the production of documents with attached</p> <p>13 documents. I'm going to go to page DEF318.</p> <p>14 I'm looking at pages 318 and 319. These</p> <p>15 appear to be e-mails between yourself and</p> <p>16 Mr. Sipas; is that right?</p> <p>17 A Yes.</p> <p>18 Q And I see these e-mails -- the</p> <p>19 e-mail roro107@optonline.net. Is that your</p> <p>20 e-mail?</p> <p>21 A That's my personal, yeah.</p> <p>22 Q Okay. Now, it appears that -- and</p> <p>23 correct me if I'm wrong -- it looks like on</p> <p>24 February 16, 2021, you're asking Mr. Sipas to</p> <p>25 buy the domain name www.valbellaatthepark.com;</p>
<p style="text-align: right;">Page 91</p> <p>1 R. Kalayjian</p> <p>2 Q All right. I'm going to go back to</p> <p>3 Exhibit 1 for one moment. And I'm going to</p> <p>4 direct your attention to Topics 20 and 22.</p> <p>5 Ms. Kalayjian, are you able to testify today</p> <p>6 on behalf of Valbella at the Park about the</p> <p>7 identities of the individuals that manage</p> <p>8 and/or operate Valbella at the Park's website?</p> <p>9 A Of course.</p> <p>10 Q And are you able to testify on</p> <p>11 behalf of Valbella at the Park about</p> <p>12 communications with potential customers,</p> <p>13 politicians, and the media relating to the</p> <p>14 opening of Valbella at the Park?</p> <p>15 A Of course.</p> <p>16 Q Who is it that manages Valbella at</p> <p>17 the Park's website?</p> <p>18 A I believe you know this answer, but</p> <p>19 I will tell you again, Guinutis.</p> <p>20 Q Guinutis Sipas?</p> <p>21 A See, I knew you knew.</p> <p>22 Q And does he work for Ten Tier, LLC?</p> <p>23 A Yes.</p> <p>24 Q And how does it work when there</p> <p>25 needs to be a change to Valbella at the Park's</p>	<p style="text-align: right;">Page 93</p> <p>1 R. Kalayjian</p> <p>2 is that right?</p> <p>3 A That is correct.</p> <p>4 Q And at this time, was Mr. Sipas</p> <p>5 managing One If By Land's website?</p> <p>6 A Yes. Yes, he was.</p> <p>7 Q Okay. And then I'm going down to</p> <p>8 DEF320. Again, it looks like these are</p> <p>9 e-mails between yourself and Mr. Sipas,</p> <p>10 correct?</p> <p>11 A Um-hum. Yes.</p> <p>12 Q And looks like he told you on March</p> <p>13 8th, 2021, that he just bought</p> <p>14 valbellaatthepark.com, right?</p> <p>15 A Correct.</p> <p>16 Q So that domain has been owned by</p> <p>17 Valbella at the Park since March 8th, 2021?</p> <p>18 A Yes.</p> <p>19 Q Are there any other domain names</p> <p>20 that Valbella at the Park owns?</p> <p>21 A No, just, I believe, that.</p> <p>22 Q And it looks like on this e-mail,</p> <p>23 on page DEF320, Mr. Sipas asks you, after he</p> <p>24 told you that he bought that domain name, does</p> <p>25 this need a new website design for it or do</p>

24 (Pages 90 - 93)

<p style="text-align: right;">Page 94</p> <p>1 R. Kalayjian</p> <p>2 you have that covered already?</p> <p>3 A Right.</p> <p>4 Q Did you respond to that e-mail?</p> <p>5 A Yes, I'm sure I did. I was hiring</p> <p>6 him. Sometimes people ask him just to buy</p> <p>7 domain names just to hold the name. He just</p> <p>8 wanted to make sure I wanted more than just a</p> <p>9 name.</p> <p>10 Q Did he design the website?</p> <p>11 A Yes.</p> <p>12 Q Did you -- how did that work? Did</p> <p>13 he come up with the design on his own or did</p> <p>14 you provide him with...</p> <p>15 A I basically told him what I wanted,</p> <p>16 and, you know, it's hard in the beginning</p> <p>17 because you don't have much content. So he'll</p> <p>18 put placeholders in and do, like, a dummy site</p> <p>19 for me to see if that's the aesthetic I'm</p> <p>20 going for. It takes a while. It takes a long</p> <p>21 time before it goes live.</p> <p>22 Q Do you remember when</p> <p>23 valbellaatthepark.com first was publicly</p> <p>24 available?</p> <p>25 MR. SEEMAN: Objection.</p>	<p style="text-align: right;">Page 96</p> <p>1 R. Kalayjian</p> <p>2 A Right.</p> <p>3 Q And that's Danielle Brown, right?</p> <p>4 A Right.</p> <p>5 Q Was Ms. Brown/Sewere working with</p> <p>6 you on the design of Valbella at the Park's</p> <p>7 website at this time?</p> <p>8 A Not really. I valued her opinion.</p> <p>9 She's had so much exposure to fabulous sites,</p> <p>10 and I just wanted her opinion.</p> <p>11 Q Okay. Did she provide any input</p> <p>12 into the design of Valbella at the Park's</p> <p>13 website?</p> <p>14 A Not really. She gave me a</p> <p>15 suggestion of a couple of other restaurants</p> <p>16 that I should look toward, because she knew</p> <p>17 the aesthetic I was going for, so she guided</p> <p>18 me to some that she had come across. It's a</p> <p>19 very long process.</p> <p>20 Q Right. And in your e-mail to</p> <p>21 Mr. Sipas, you say, here is our logo for</p> <p>22 Valbella at the Park for you to use as a</p> <p>23 placeholder.</p> <p>24 A Right.</p> <p>25 Q And it looks like these are</p>
<p style="text-align: right;">Page 95</p> <p>1 R. Kalayjian</p> <p>2 A I'm sorry. I don't know what that</p> <p>3 means, publicly available.</p> <p>4 Q When he purchased the website</p> <p>5 valbellaatthepark.com on March 8, 2021, right?</p> <p>6 A Right.</p> <p>7 Q So if someone went to the website</p> <p>8 on that date, would they see anything?</p> <p>9 A No. No. There's nothing there.</p> <p>10 Q All right. Do you recall when it</p> <p>11 was in time that a member of the public could</p> <p>12 go to valbellaatthepark.com and see any</p> <p>13 content at all?</p> <p>14 A I believe when we opened, when we</p> <p>15 launched is when we launched. I don't recall</p> <p>16 the exact date, but I believe -- because I had</p> <p>17 no content, so there was no sense in putting</p> <p>18 anything up.</p> <p>19 Q Okay. All right. I'm going to go</p> <p>20 up to DEF315. This looks like an e-mail sent</p> <p>21 from you to Mr. Sipas on July 13th, 2021; is</p> <p>22 that right?</p> <p>23 A Right.</p> <p>24 Q And cc'd on this is Danielle</p> <p>25 Sewere?</p>	<p style="text-align: right;">Page 97</p> <p>1 R. Kalayjian</p> <p>2 attachments to your e-mail; is that right?</p> <p>3 A Um-hum.</p> <p>4 Q And that's the logo that you sent</p> <p>5 him?</p> <p>6 A Correct.</p> <p>7 Q And in closing you say, in the</p> <p>8 meantime, just wanted you to have our logo to</p> <p>9 maybe say coming soon on our landing page.</p> <p>10 Was there ever a publicly available version of</p> <p>11 Valbella at the Park's website that was just a</p> <p>12 landing page that said coming soon?</p> <p>13 A He might have done that. I don't</p> <p>14 remember how that turned out, but I gave it to</p> <p>15 him in case so when somebody typed in</p> <p>16 valbellaatthepark.com, it wasn't just -- I</p> <p>17 don't remember -- it might have been fuzzy or</p> <p>18 jumbled stuff. I don't remember what happens</p> <p>19 when you buy a name and you don't use it. So</p> <p>20 he might have put something there.</p> <p>21 Q Okay. Do you recall giving him a</p> <p>22 design for a landing page or anything like</p> <p>23 that?</p> <p>24 A Obviously, it's right there. I</p> <p>25 gave him the logo.</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 R. Kalayjian</p> <p>2 Q Before he makes any changes to</p> <p>3 Valbella at the Park's website, does Mr. Sipas</p> <p>4 run those changes by you?</p> <p>5 A He doesn't do a change unless I</p> <p>6 tell him to make a change.</p> <p>7 Q So anything that appears on</p> <p>8 valbellaatthepark.com, you've reviewed and</p> <p>9 approved?</p> <p>10 A Correct.</p> <p>11 Q All right. I'm going to show you</p> <p>12 what is a screen grab of my web browser. Are</p> <p>13 you familiar with the website the Way Back</p> <p>14 Machine?</p> <p>15 A The what? No.</p> <p>16 Q I'll represent to you that it's a</p> <p>17 nonprofit that captures websites on the</p> <p>18 internet at specific points in time. And I</p> <p>19 went on it and I looked at</p> <p>20 valbellaatthepark.com, and this was captured</p> <p>21 on December 22nd, 2021. Does this look</p> <p>22 familiar, like the landing page of Valbella at</p> <p>23 the Park --</p> <p>24 A No.</p> <p>25 Q -- at any point in time?</p>	<p style="text-align: right;">Page 100</p> <p>1 R. Kalayjian</p> <p>2 recall if we did one.</p> <p>3 Q When you -- the e-mails that we</p> <p>4 just looked at, are those e-mails that you</p> <p>5 collected and produced to Mr. Seeman?</p> <p>6 A Yes.</p> <p>7 Q When you -- and you found those</p> <p>8 e-mails by searching your personal e-mail</p> <p>9 account?</p> <p>10 A Yes.</p> <p>11 Q The roro107@gmail?</p> <p>12 A That's my personal.</p> <p>13 Q Are these all the e-mails between</p> <p>14 yourself and Mr. Sipas relating to the</p> <p>15 creation of valbellaatthepark.com that you</p> <p>16 located?</p> <p>17 A No. I have thousands of</p> <p>18 communications. I communicate with him -- no.</p> <p>19 I don't know. I didn't count. I just sent</p> <p>20 what I could at that time.</p> <p>21 Q So there are e-mails between</p> <p>22 yourself and Mr. Sipas relating to</p> <p>23 valbellaatthepark.com, which have not yet been</p> <p>24 produced; is that right?</p> <p>25 A There's thousands. It would take a</p>
<p style="text-align: right;">Page 99</p> <p>1 R. Kalayjian</p> <p>2 A No. I would never do that. That's</p> <p>3 not even the right phone number. I would</p> <p>4 definitely not do that. I wouldn't give the</p> <p>5 wrong phone number to my own business. So</p> <p>6 whoever did this, mocked this up obviously</p> <p>7 doesn't know what the hell they're doing.</p> <p>8 Q Do you recall Mr. Sipas ever</p> <p>9 running anything like this by you for</p> <p>10 publishing on valbellaatthepark.com?</p> <p>11 A I wouldn't authorize that. That's</p> <p>12 the wrong phone number to my new business.</p> <p>13 Q Okay. So you don't recognize this</p> <p>14 is what you're saying?</p> <p>15 A No.</p> <p>16 Q This is the logo, right?</p> <p>17 A It's my logo. So what? People</p> <p>18 copy and paste logos all the time. I do it</p> <p>19 for customer's menus.</p> <p>20 Q If Mr. Sipas discussed with you</p> <p>21 about putting a landing page or the content on</p> <p>22 a landing page or anything like that, would</p> <p>23 that be contained in an e-mail to you?</p> <p>24 A You just saw the e-mail that I gave</p> <p>25 him. Yes. Would he, he would, but I don't</p>	<p style="text-align: right;">Page 101</p> <p>1 R. Kalayjian</p> <p>2 very long time to do that. I gave what was</p> <p>3 the most important. I don't think you really</p> <p>4 care, you know, remove this comma, take this</p> <p>5 period out. Do you?</p> <p>6 MR. BUZZARD: I would ask that a search be</p> <p>7 performed for communications between Ms.</p> <p>8 Kalayjian and Mr. Sipas relating to</p> <p>9 valbellaatthepark.com for the time prior to</p> <p>10 March 31st, 2022.</p> <p>11 MR. SEEMAN: We'll take that under</p> <p>12 advisement.</p> <p>13 MR. BUZZARD: And that they be produced.</p> <p>14 MR. SEEMAN: Okay. Thank you. Thank you,</p> <p>15 Counsel.</p> <p>16 Q Sorry, very quickly, you said</p> <p>17 that -- just going back to this page I was</p> <p>18 just looking at, you said that the telephone</p> <p>19 number was wrong, right?</p> <p>20 A Yes. Why would I post the wrong</p> <p>21 phone number?</p> <p>22 MR. SEEMAN: There's no question.</p> <p>23 A So dumb.</p> <p>24 Q Do you recognize that phone number?</p> <p>25 A Yes.</p>